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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIO SANCHEZ,

Defendant and Appellant.

E048954

(Super.Ct.No. RIF126372)

OPINION

APPEAL from the Superior Court of Riverside County. Mac R. Fisher, Judge.

Affirmed.

Linda Acaldo, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Barry Carlton and Donald W. Ostertag, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant Mario Sanchez of felony assault with force likely to cause great bodily injury (count 3—Pen. Code § 245, subd. (a)).<sup>1</sup> The court granted defendant's motion to reduce the offense to a misdemeanor and granted defendant probation on various terms and conditions. On appeal, defendant contends the trial court erred in admitting defendant's statement to police that he had been drinking the type of beer used in an assault upon one of the victims. Defendant additionally argues the trial court erred in permitting a police officer to testify that the clothing worn by the individuals portrayed in a surveillance video of the assault matched what they were wearing when detained at the police station. Finding no error, we affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

On October 8, 2005, at around 9:00 p.m., Rodrigo Landeros and his brother Silverio<sup>2</sup> pulled up on opposite sides of a pump at a gas station in their respective trucks, and got out to refuel. Elio Muniz approached Rodrigo and asked him for money. When Rodrigo replied that he did not have any, Muniz struck him in the face with a glass bottle. Four or five additional men then joined Muniz in pushing Rodrigo to the ground where they punched and kicked him. Rodrigo testified that someone unsuccessfully attempted to take his wallet. The group then pushed Silverio to the ground where they beat him as well. Silverio testified that someone reached in his pocket and stole \$480.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> For ease of reference, the Landeros brothers will be referred to by their first names.

By happenstance, Riverside Police Sergeant John Romo pulled into the adjacent intersection in a patrol car and noticed the fight. Sergeant Romo relayed to dispatch his need for backup units at the location. He then drove into the gas station parking lot. As soon as the group saw the patrol car they fled. Sergeant Romo drove up to Rodrigo who pointed at a fleeing individual and exclaimed that someone had taken his money.<sup>3</sup> Sergeant Romo pursued the individual, who he identified at trial as defendant, in his patrol car. He caught defendant within 10 to 30 seconds, approximately one block away from the gas station. Sergeant Romo never lost sight of defendant during the chase. Rodrigo was unable to positively identify defendant as one of the perpetrators at an infield lineup that evening.

Two other suspects, Elio Muniz and Victor Lara were found together and detained that evening some 10 to 15 minutes after Sergeant Romo's call for backup. Silverio positively identified Muniz as the individual who struck Rodrigo with the bottle.

Sergeant Romo interviewed defendant at the police station that evening. Defendant stated that he had been drinking "211" beer at his home. He was walking to the liquor store when he witnessed the fight; however, he denied being involved. A broken bottle of "211" beer was found in the location where Rodrigo had been struck. Defendant was wearing a dark "bluish" hooded sweatshirt and dark, three-quarter length shorts when detained. No money was located on any of the suspects.

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<sup>3</sup> Sergeant Romo testified that Rodrigo later informed him that no one had actually taken his money; rather, they had taken money from his brother. Rodrigo had yelled that they had taken his money to ensure the officer would chase after the offenders.

Officer Felix Medina assisted in the investigation by viewing the surveillance video at the gas station multiple times that evening. While watching the video, Officer Medina took down detailed notes describing the perpetrators. He observed four attackers in the video. He described one of the perpetrators as a Hispanic male wearing a dark hooded sweatshirt with a white shirt which was sticking out from underneath, dark shorts or pants, white socks, and dark shoes. When he returned to the police station the first individual he saw in the booking area was wearing a gray hooded sweatshirt with a white shirt sticking out from underneath, dark pants or shorts, white socks, and dark shoes.

Muniz was charged by information, as amended, with assault with a deadly weapon on Rodrigo, (count 1—§ 245, subd. (a)(1)), robbery of Silverio (count 2—§ 211), and assault by means of force likely to produce great bodily injury on Rodrigo or Silverio (count 3—§ 245, subd. (a)(1)). Muniz and Lara were charged in both counts 2 and 3 of the amended information. The People played the surveillance video to the jury on multiple occasions. Photographs of the three defendants taken at the police station that evening were also admitted into evidence. The jury found Muniz guilty in counts 1 and 3. It found Lara not guilty of both counts 2 and 3. It deadlocked on count 2 as to both Muniz and defendant. Therefore, the court declared a mistrial as to count 2 with respect to both Muniz and defendant.

## DISCUSSION

### A. DEFENDANT’S STATEMENT THAT HE WAS DRINKING “211” BEER

Defendant contends that the court erred in permitting Sergeant Romo’s testimony regarding defendant’s statement that he had been drinking “211” beer on the night of the assaults. He maintains the evidence was both irrelevant, because he was not the individual charged with assault with the bottle, and that it was more prejudicial than probative. We disagree.

Only relevant evidence is admissible at trial, and trial courts have broad discretion to determine the relevance of proffered evidence. (*People v. Weaver* (2001) 26 Cal.4th 876, 933.) A trial court’s rulings on relevance and the admission or exclusion of evidence are reviewed for abuse of discretion. (*People v. Hamilton* (2009) 45 Cal.4th 863, 944.) Even if relevant, the trial court has discretion to “exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” (Evid. Code, § 352.) Because the trial court enjoys broad discretion in assessing whether the probative value of particular evidence is outweighed by concerns of undue prejudice, its exercise of that discretion must not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.)

Here, the evidence that defendant admitted drinking “211” beer, the same type of beer (bottle) used in the assault upon Rodrigo, was unquestionably relevant as evidence that defendant was not merely a passerby, but someone involved in the assaults upon Rodrigo and Silverio. Indeed, as the prosecutor noted in her closing argument, “211” beer is not nearly as ubiquitous as other, more commonly consumed mass market beers. Likewise, defendant also admitted that he was passing by the station at the exact moment the attack occurred. The jury could readily have determined that, contrary to defendant’s statement, his presence near the station at the same moment of the attack, after having admitted use of the same type of beer (bottle) used in the assault was no coincidence. This is because, as posited in the prosecution’s theory of the case, the group of attackers could have been sharing a package of beer while awaiting prospective targets.

Moreover, just because defendant was not charged with the assault with the bottle does not make the evidence that he was drinking the same kind of beer irrelevant. As noted above, defendant could have merely been sharing beers with his fellow offenders. Defendant’s contention that the evidence would prejudicially permit the jury to infer that defendant supplied the bottle to Muniz does not negate the strong probative value of the evidence. Indeed, the jury very well could have reasonably determined that defendant did supply the bottle used in the assault to Muniz; although, we note that Muniz also admitted drinking “211” beer on that night. In sum, the evidence that defendant admitted drinking a relatively obscure brand of beer, the bottle of which happened to be used in an assault occurring at the exact moment he was admittedly near the station, was strongly

probative of his involvement.<sup>4</sup> The trial court acted within its broad discretion in determining the evidence was more probative than prejudicial.

Finally, to the extent the trial court committed any error in admitting the evidence, the error was harmless by any standard. Defendant admitted being at or near the station at the exact time of the assaults. Immediately upon Sergeant Romo's arrival on the scene, Rodrigo pointed out defendant as one of his assaulters. Defendant ran, an obvious indication of consciousness of guilt. Without losing sight of him, Sergeant Romo chased down and detained defendant. Sergeant Romo identified defendant in court as the individual whom he had detained that evening. The surveillance video reflected that someone wearing clothes matching those in which defendant was detained participated in the assault. Thus, defendant is unable to demonstrate prejudice, under any standard of review. (*Chapman v. California* (1967) 386 U.S. 18, 24 [harmless beyond a reasonable doubt]; *People v. Watson* (1956) 46 Cal.2d 818, 836 [no reasonable probability the error affected the result].)

B. OFFICER MEDINA'S TESTIMONY REGARDING THE CLOTHING  
WORN BY THOSE DEPICTED ON THE SURVEILLANCE VIDEO

Defendant argues that the trial court erred in permitting Officer Medina to testify that the individual detained at the police station was wearing clothing identical to or closely matching that depicted in the surveillance video. He contends the evidence was

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<sup>4</sup> We are also not unaware of the "coincidence" that two of the defendants in the case admitted drinking a particular brand of beer, a bottle of which was used in committing the assault, potentially named after the very crime they were charged with, i.e., robbery, section 211.

irrelevant because the jury was just as capable as Officer Medina to watch the surveillance video and look at the photographs taken at the police station to make the same determination. Moreover, defendant avers that Officer Medina's testimony was prejudicial in that the jury was likely to lend more weight to the officer's testimony than it would to its own determination. We disagree.

Here, Officer Medina's testimony was relevant to convey that the authorities made every effort to ensure that they had detained and arrested an individual actually involved in the assault. Indeed, defendant's sole defense was mistaken identity. Officer Medina's assistance in the investigation of the assaults that evening consisted of multiple reviews of the surveillance video at the gas station. He viewed the surveillance video multiple times, focusing each time on one of the offenders; he paused and rewound the video multiple times to ensure the accuracy of his observations; he took notes of his observations. Once he completed his observations, he traveled to the police station where he observed that the detained individuals closely matched those portrayed in the video. Although ultimately it was the province of the jury to determine whether defendant was one of the individuals who participated in the crime, Officer Medina's testimony was strongly probative of the fact that the police had not merely rounded up individuals in the immediately surrounding vicinity.

Defendant's citations to *People v. Mixon* (1982) 129 Cal.App.3d 118 (*Mixon*) and *U.S. v. Butcher* (9th Cir. 1977) 557 F.2d 666, for the proposition that Medina's testimony was impermissible, are unavailing. In *Mixon*, testifying officers positively identified the defendant from their observations of surveillance photographs taken at the scene of the

crime based on their prior interactions with the defendant. (*Mixon*, at pp. 125-126.) The court held that admission of the officers' testimony was within the trial court's discretion because they testified "from personal knowledge of the defendant's appearance at or before the time the photo was taken." (*Id.* at pp. 128, 135.) However, unlike *Mixon*, Medina here did not identify defendant in his testimony; rather, he merely noted that the individuals depicted in the surveillance video closely matched those detained at the police station. Moreover, unlike in *Mixon*, Medina's testimony did not pose the prejudicial implication that defendant was previously under police scrutiny. (*Id.* at p. 129.) Similarly, the testifying officer in *Butcher* expressly identified the defendant from surveillance photographs taken from the crime scene based on his numerous previous contacts with the defendant. (*Butcher*, at p. 667.) Moreover, two percipient witnesses to the crime were able to positively identify the defendant. (*Ibid.*) Thus, here, where none of the percipient witnesses could positively identify defendant, Officer Medina's testimony, that the individuals portrayed in the surveillance video closely matched those detained, posed no prejudice sufficient to outweigh its probative value. The court acted within its discretion in admitting Officer Medina's testimony.

Indeed, ultimately "the jury took both the surveillance [video] and arrest photos, along with the other exhibits, into the jury room and could easily have made the comparison suggested by [defendant]." (*Mixon, supra*, 129 Cal.App.3d at p. 132.) Thus, Medina's testimony was "'only as an aid in arriving at the ultimate decision' regarding 'the identity of the culprit and the defendant's guilt or innocence.'" [Citation.]" (*Id.* at p. 128.) Finally, as discussed above, any error was harmless beyond a reasonable doubt.

**DISPOSITION**

The judgment is affirmed.

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/s/ MILLER  
J.

We concur:

/s/ McKINSTER  
Acting P. J.

/s/ KING  
J.